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ABSTRACT

This paper critiques the use of zero tolerance policies for general and special education students, focusing on equal educational opportunity. It presents an alternative comprehensive schoolwide approach to discipline that infuses best practices and a philosophy of democratic education. The Individuals with Disabilities Education Act (IDEA) protects the rights of disabled students and addresses discipline. In order to facilitate equal educational opportunity, there must be a democratic standard that meets an authorization and threshold principle that ensures nondiscrimination and nonoppression. Zero tolerance policy does not allow for a democratic state of authority that balances decision making between local and state representation, nor does it recognize differences or individual situations. By applying zero tolerance policies, schools do not provide guidance and treatment for disruptive students. IDEA does not provide protection to disadvantaged students who do not qualify for special education. The proposed comprehensive schoolwide model applies components of best practices from several models, including posting and reviewing consistent schoolwide rules and expectations; developing a community of learners; recognizing and valuing diversity; and providing resources and support for at-risk students. (Contains 23 references.) (SM)

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ZERO TOLERANCE/ IDEA 97

AND

EQUAL EDUCATIONAL OPPORTUNITY- NOT !

Judith Ableser

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Alternatives to Expulsion, Suspension and Dropping-Out of School

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Introduction

As school districts and policy makers sing the praise of a Zero Tolerance Policy as a response to school violence, proponents of equal educational opportunity should be crying foul. A Zero Tolerance Policy for preventing, reducing and responding to violent behavior in the schools is neither reasonable, responsible or rationale as it does not create safer schools nor does it teach the fundamental skills of a democratic education. Suspension and expulsion, as a result of a zero tolerance policy, not only undermines equal opportunity, it prevents any opportunity at all. It is both discriminatory and oppressive because of the over representation and disproportionate number of minority and low income males who comprise the majority of those students who are suspended or expelled. This presentation will critique the ineffectiveness and inappropriateness of Zero Tolerance for general and special education students within a conceptual framework of equal educational opportunity (Gutmann 1999, Howe 1997). An alternative comprehensive school wide approach to discipline will be presented that infuses best practices and a philosophy of democratic education that provides a get-smart approach to discipline rather than a get-touch approach.

Equal Educational Opportunity

The purpose of education, according to Amy Gutmann (1999) in Democratic Education , is to teach the skills and virtues of democratic deliberation and participation. Her distributive justice theory, that underlies her equal education opportunity, is based in on principles of nonrepression and nondiscrimination. The principle of nonrepression prevents the state from using education to restrict rational deliberation of competing competencies of the good life and good society (p.44). The principle of nondiscrimination supports the concept of social

reproduction which ensures that all children, who are educable, must be educated. Gutmann attempts to provide a theoretical model for equal educational opportunity by developing a distributive theory of deliberative democracy. Participation and deliberation are achieved through the principle of authorization and the threshold principle which ensures nonrepression and nondiscrimination.

Howe (1997) expands upon Gutmann s theory in his book Understanding Equal Educational Opportunity . He believes that equal educational opportunity does not simply refer to nonrepression and nondiscrimination but must go b. yond the threshold and authorization principle to include principles of nonoppression and recognition. His concern is that if we cannot deal with the authorization principle adequately we will never get to the threshold principle. Equal educational opportunity is not simply about tolerating differences, according to Howe, but about recognizing and valuing differences. He believes, as does Iris Young, that oppression denies the essence of who you are or that you even cease to exist. Oppression includes any form of exploitation, marginalization, powerlessness, cultural imperialism or violence (p.70). The principle of nonoppression establishes a process to guarantee that all groups are genuinely recognized and that special rights are granted for those groups who could be oppressed (p 69-70). One of his primary aims is to identify and recognize individuals and groups who cannot easily participate and deliberate and provide a process of special rights that ensures their recognition and nonoppression.

Howe s interpretation of equal educational opportunity builds upon Gutmann s theory but extends and refines it. His participatory model includes the principles of nonoppression and recognition that value the differences and diversity of a democracy and provides special rights to

protect those who cannot easily participate and deliberate.

The origins of Zero Tolerance began in the 1980's as a response to federal and state drug enforcement policies but have now expanded into the public schools to deal firmly and harshly with many forms of disciplinary problems (Skiba and Peterson, 1999). District and school codes of conduct often include suspension and expulsion for behaviors ranging from weapon and drug offenses to many minor nondangerous behaviors such as truancy, swearing, disrespect, disobedience and dress code infractions (Skiba & Peterson 2000, 1999). The Council for Exceptional Children (1999, 2000) have developed a position statement against suspension and expulsion. C.E.C. state that any form of suspension and expulsion creates a false of security. Not only are our schools unsafe, when we suspend students, but our streets and communities become unsafe because students are not being supervised or learning appropriate behaviors.

A Zero Tolerance policy is ineffective; is applied inconsistently; and creates a cycle of failure and increases drop-outs and that it is culturally biased. Studies have found that the majority of students who are suspended do not actually pose a threat to school safety but are breaking school rules (Skiba & Peterson, 1999). They cited one study that found the strongest predictor of school exclusion was poor academic performance. Even more disturbing is the disproportionate number and over representation of minority and poor male students who are most often suspended and expelled (Skiba and Peterson, 2000, 1999; Bacon, 1990; Townsend, 2000; CPCOPS, 1992; Shaw & Bradon, 1990). Skiba and Peterson (1999) cited findings from studies that included that 53% of all suspensions were given to African American males but they only represented 28% of the population (CPCOPS, 1992). Other studies found that three times as many minority students were suspended compared to white students (Townsend, 2000) and that African American males

were twice as likely to be suspended then other students (Bacon, 1990). African Americans also appear to be disciplined more harshly for less serious offenses (Shaw & Bradon, 1990). Skiba and Peterson (1999) conclude that although both race and socioeconomic status are highly correlated with suspension, when controlling for socioeconomic status, race appears to be the strongest factor.

Discipline and IDEA 97

Individuals with Disabilities Education Act Amendment of 1997; hence for IDEA 97,is the federal rights educational law that ensures and protects the rights to provide a free and appropriate public education for all children who have been identified as disabled and require special education or support services. The law replaces the original 1975, PL 94-142; Education for All Handicapped Children Act, but continues to preserve the principles of zero-rejection, nondiscriminatory evaluation, an appropriate education with an individual education plan, least restrictive environment, due process and parent and student involvement.

Some of the most significant and challenging changes in the laws and regulations are in area of discipline regarding suspension and expulsion. Due to heightened awareness and concern for school and public safety, Congress needed to balance the rights of disabled children to a free and appropriate education with the need for school safety. They were required to align special education law with general education policy and limit the perceived dual treatment of disabled and nondisabled students.

The following will highlight and summarize the major components of IDEA 97: discipline. Disabled students may be suspended for up to ten days without receiving any service. Following a cumulation of ten days, however, no total cessation of services may continue. If the behavior

resulting in a disciplinary action that would, under general school policy, extend beyond ten days, a manifestation determination meeting must be held. The purpose of this meeting is to ascertain if the behavior in question was due to or affected by the disability. If it is determined that the behavior was not as a result of the disability, the student can be disciplined in the same manner as a nondisabled student (i.e. suspended from school). Because the law requires that no special education student can have a total cessation of service, the student must continue to be provided with an appropriate education (I.E.P. and general curriculum) but in an alternative setting. In other words, the student can be suspended from that particular school setting but must continue to be provided with certain services. If it is found that the behavior was due to the disability, the disciplinary action ceases and a reevaluation of the student s program is required including decisions regarding placement and behavioral interventions. A functional assessment of behavior and an behavioral plan are developed and implemented. In situations involving weapons, drugs and dangerous behaviors the student can be placed in an Interim Alternative Educational Setting (IAES).

Students who have not been officially identified as disabled may receive protection under IDEA if their parents or teachers have previously expressed concern about their behavior to the special education administration. In this case, a similar manifestation determination meeting would be conducted to review and assess the situation.

Analysis: Equal Educational Opportunity and Zero Tolerance/IDEA 97:

Zero tolerance is a dramatic illustration of the antithesis of Amy Gutmann s (1999) democratic education. Clearly, one can not participate nor deliberate if they are excluded due to suspension or expulsion. The principle of nondiscrimination is not being applied but not supporting the

concept of social reproduction, which ensures that all children who are educable, must be educated.

Zero tolerance is merely an attempt to apply a morality of authority or conservative moralism by teaching children only to obey (respect or fear) authority without providing them an opportunity to deliberate or use reason. Children should not just learn to behave in accordance with authority but to think critically about authority if they are to live up to the democratic ideal of sharing political sovereignty as citizens through a process of democratic moralism (p.51).

In order for there to be equal educational opportunity there must be a democratic standard that meets an authorization and threshold principle that ensures nondiscrimination and nonreppression. There is no threshold in many zero tolerance policies; any and all levels of misconduct may be treated the same. A melting pot; one-size-fits-all approach is being applied with dangerous results. The policy is set and enforced by those in power. It does not allow for a democratic state of authority which balances decision making between local and state representation nor does it recognize differences or individual situations.

By applying a zero tolerance policy, the schools are clearly usurping their responsibility to provide guidance and treatment for disruptive students. No educational resources or services are being offered to these students which does not even meet a maximization model. By the educational system saying that they cannot provide a safe school learning environment and, therefore, must suspend and expel disruptive students, they are merely washing their hands of their responsibility. But who is responsible? Were are the services? Once a student is suspended or expelled who pays the price? We all do. How can a student learn to participate or deliberate if they are suspended, expelled or ultimately drop out? One only has to look as far as the criminal

system to see where the road leads and the cost we all pay. We need to provide comprehensive Children s and Youth Services that include educational, mental health, social services and health services for disruptive students. Perhaps some students cannot continue in the regular community school but they need and deserve to continue to get an education and treatment through appropriate alternative programs for their sake and the sake of the community at large. What type of an education or intervention or students learning out on the streets or in our jails?

Discrimination and repression are clearly evident when one analyzes the demographics of who is being suspended and expelled . As previously cited, a highly over representation of African American males and students from low socioeconomic backgrounds are suspended, and in many cases suspended for behaviors that are less severe then those of their white counterparts.. There is a high correlation between suspension and future drop out rates. One must wonder if this is not an example of those who are in power and control are trying to perpetuate the cycle of repression and discrimination. By not wanting to confront and support these students, they remove and exclude them. In Fine s (19) Framing Drop-outs she argues that school communities are structured to reinforce and reward those in power and priveledge and to create an atmosphere to push out and keep out those who are marginalized or oppressed due to their ethnicity, gender, race or class. The system can say that it was the student s choice to drop-out and they are not responsible to provide further services. But who is? And what choice and opportunity did the students have?

What it most disconcerting, is that although IDEA 97 provides protection and special rights and recognition for those who are identified as disabled, it does not provide recognition to those who are disadvantaged. The key is in who and who does not qualify for special education. In order

to be eligible to receive special education and support services, one must be assessed and identified as fitting into a specific category such as learning disabled, emotionally impaired, other health impairments etc. In each category, however, it clearly states that the disorder cannot be primarily due to... environmental, cultural or economic disadvantage (IDEA 97). Therefore, disadvantaged students, who are oppressed are being further discriminated against because they are not getting the special recognition and rights that they need in order to participate.

IDEA 97, protects disabled students rights and provides them a voice, through the I.E.P. team, which includes parents, advocates and professionals who can represent those who cannot represent themselves. Where is this voice for the disadvantaged student who is disruptive and in need of treatment? The manifestation determination team may review students, but if they conclude that their behavior is not due to a specific disability, they can then get suspended or expelled. Who actually can make the determination if a behavior is due to a disability or a disadvantage situation? Current brain research has demonstrated that deprivation, early trauma and lack of stimulation can have serious developmental effects (Newberger, 1997). Could a case not be made, therefore, that any student who has been oppressed through exposure to violence, lack of stimulation due to social and economic disadvantage should receive protection under special education law? Oppression is evident in the over representation of marginalized groups who are suspended or expelled. According to Howe, it is this very group who should receive special recognition and rights that will protect them. One could argue that although males are not an oppressed group, they are being repressed because their style of learning and behavioral responses are not being appropriately addressed through an educational system that reinforces quiet and compliant behavior.

Zero tolerance does not even apply the formal model of equal educational opportunity by even providing a physical setting or building. It excludes students from any school setting what-so-ever. And, clearly zero tolerance, provides no compensatory or benefits for the least advantaged. Are disadvantaged disruptive students truly acting out of their free choice? Is it anymore their choice to be born into poverty then it is to be born with a disability? Both are handicaps.

Curwin and Mendler (1999) state in their article, aptly entitled, Zero tolerance for zero tolerance that this is another example of the road to hell paved with good intentions.

> What was originally intended as policy to improve safety in schools by ensuring that all children, regardless of race, athletic ability, or parental influence, follow the rules is now used as an excuse to treat all children the same when they are in need of corrective measures. Schools should have zero tolerance for the idea of doing anything that treats all students the same. One size does not and should not fit all...despite its appearance of fairness, it is inherently an unfair policy...any intervention that treats dissimilar problems with similar behavioral outcomes the same is not only unfair but destined to fail (p.119).

It is time that we expand or revise our notion of who needs special services and special rights to include all students who demonstrate need and concern irrespective of cause. We must have a range of services to address their needs for their protection and, ultimately for the protection of the community at large.

Alternative: Comprehensive Approach to Discipline

Our schools must provide a environment in which students can feel safe and secure in which to learn. Violence or the threat of violence must be addressed and confronted through a proactive comprehensive school-wide approach that . A zero tolerance policy for student misconduct,

however, is not effective practice nor does it provide an equal educational opportunity or a democratic education. It is only a one-size-fits- all approach that views the solution as a quick fix. The following comprehensive school-wide model will be described and analyzed in terms of equal educational opportunity and democratic education as outlined by Gutmann (1999) and Howe (1997) by using a particpatory approach and democratic standard.

The model applies components and aspects of best practices from: Positive Behavior Support for all Michigan Students: Creating Environments that Assure Learning (2000), Early Warning:Timely Response (U.S.D.E., 1998), Safe Schools: Safe Students- A Guide for Administrators, Principals, Teachers and Parents (CASE, 2000), Waging Peace in Our Schools (Lantieri & Patti, 1996) and others (Levin, 1994; Skiba & Peterson, 2000; Nelson, 1998; Horner, 2000; Clark, 1999).

1. Policy Design and Implementation team- a group of individuals comprising of the principal, teachers, administrators, professionals, parents, and students would design and develop a school-wide policy/ code of conduct that addresses proactive and prosocial behaviors that are to be modeled, taught, and reinforced through-out the school and consequences for inappropriate behaviors. The team would outline an action-plan of roles and responsibilities for review meetings, crisis intervention response, specific cases, due process, etc.

2) *Consistent school wide rules and expectations are posted and reviewed.* Teachers and administrators need to teach and reinforce the concept and practice of mutual respect and thinking critically about authority.

3) *Pro-social and proactive school-wide activities and opportunities would be established that would reinforce socially responsible behavior and the democratic process.* For example, an

assembly with representation from each class or a school wide- thematic unit or social action project. When individuals are given a sense of ownership and responsibility they are more likely to feel a sense of belonging.

4) *Infused and Integrated Curriculum approach that teaches, models and experiences a democratic standard or participation and deliberation.* Critical thinking and problem solving should be explored through the content of acceptance, recognition and valuing of diversity, non-violence, conflict-resolution, responsibility, and civic integrity.
This should not be done by adding on a new subject of non-violence into an already overextended curriculum. Rather an integrated holistic approach to learning and classroom management should be infused into the classroom community through authentic, purposeful and relevant experiences. For example, a language arts lesson could focus on the conflict in the story and how it is resolved. Literature involving diversity could be explored. Problem solving in math could be extended and applied to real life problems and critical thinking. Issues of multiculturalism, repression and oppression can be discussed and explored using developmentally appropriate practices for all grade levels in social studies and civic education. Teachers need to have resources and training to know how to listen to and respond to sensitive issues that must be addressed openly and honestly.

5) *A community of learners who live and practice democratic responsibility.* Mutual respect is modeled and reinforced. The teacher, as the authority, earns the respect through her/his appropriate behavior. Class rules and responsibilities are based on democratic values and principles. Consequences for inappropriate behaviors are logical and relevant to the behavior in question. The students should be involved in the development of the rules and consequence, hence, setting their own threshold of acceptable behavior.

6) *Diverse classroom and school-* recognition and valuing of diversity within the classroom community. Support and resources for the integration of special needs students and those from diverse backgrounds. In order for the strengths and needs of all students to be successfully met, additional resources and special rights and recognition must be available. For example, if a child cannot attend to a task for the entire period, alternative options need to be available. Various learning styles, levels of attention, needs and strengths must be valued and recognized through additional supports and services.

7) *Resources and supports for at-risk students-* A collaborative support system that utilizes and works with other agencies and resources to provide counseling, training and support for student s who are demonstrating behavioral, emotional or other problems. The schools must work with mental health agencies, social services, law enforcement and juvenile authorities. More interagency agreements need to be developed where there are additional resources and funds (the

pot becomes larger) from other agencies. Wrap-around services must be available. Perhaps an umbrella agency such as Unified Children s and Youth Services is required such as suggested by the Whole Schooling Consortium.

8) Functional Assessments and Behavior Intervention Plans for all students in need- Any student who has a significant behavioral problem (not only those who are identified as special needs) should have a comprehensive assessment and intervention plan developed by a team (teacher, specialist, parent, student). We cannot simply punish or suspend students for inappropriate behavior. We must first try to understand the function the behavior serves and then provide guidance and skills to teach them more acceptable behaviors. Logical and reasonable consequences should be included.

9) Additional Alternative Programs and Placements for students displaying truly dangerous behaviors. There are some students who cannot and should not be in the regular classroom due to the severity of their behavior but should not be excluded from educational or treatment opportunities. Many of the students only hope for future deliberation is through intensive educational and treatment support.

10) Community and Society at large- As long as violence continues within our society, it will continue within our schools. We can, however, have an impact in preventing some and reducing the extent of violence both in the schools and in the community through the values and practices of equal educational opportunities and a democratic education that promotes participation and deliberation.

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